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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**ORIGINAL**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W. – The Portals  
Washington, D.C. 20054

Re Time Warner Cable Notice of Ex Parte Presentation  
Digital Must Carry, CS Docket No. 98-120

Dear Ms. Dortch:

This letter serves as a response to the Notice of Ex Parte Presentation (“Notice”) filed by Time Warner Cable (“TWC”), on November 19, 2003, in which TWC reported on what it claims to be its “continued and steady progress in completing new deals with digital broadcast stations.” We write to take issue with the implication therein that TWC is willingly promoting the conversion to digital television (the “DTV Transition”) by carrying digital broadcast stations on its cable systems.

This office serves as counsel to KVMD Licensee Co., LLC (“KVMD”), licensee of Digital-Only Station KVMD-DT, Twentynine Palms, California (the “Station”). KVMD’s experiences with TWC directly contradict TWC’s claims in the Notice, and demonstrate that TWC’s commitment to the DTV Transition is inadequate. TWC’s refusal to carry the Station denies viewers in the communities served by TWC in the Los Angeles market (the “TWC Communities”) access to a digital-only independent station with unique local programming and frustrates the DTV Transition.

The Station is an authorized full-service digital television station whose community of license is Twentynine Palms, California, which is located within the Los Angeles Nielsen Designated Market Area (“DMA”). The Station is authorized to broadcast on Channel 23, and commenced digital-only operations on June 1, 2003, pursuant to Commission authorization. *See KVMD(TV), Twentynine Palms, CA*, DA 03-1481, released May 1, 2003. Since adopting its new digital format, KVMD has aggressively sought to bring unique local programming to viewers in the Los Angeles DMA, including residents of the TWC Communities. To that end, over the past several months, KVMD has bolstered the Station’s local programming line-up with extensive, often exclusive, coverage of local sporting events and unique foreign language programs.

The Station has previously broadcast an array of local sporting events, including: football games between area high schools; minor league professional baseball; a local equestrian show entitled “Show Jumping Unplugged,” filmed in Burbank and Del Mar, California, and broadcast three times a week; Big West Conference Women’s Soccer, including the championship game

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between University of California, Santa Barbara and California Polytechnic State University, San Luis Obispo, local auto racing on a program called "Racing from Perris (California) Auto Speedway;" local minor league professional hockey games involving the Long Beach Ice Dogs; and local professional boxing matches. Further, KVMD will televise the following local sporting events: Big West Conference Men's Basketball games, with the first game beginning January 8, 2003 between University of California, Irvine and California State University, Northridge, to be followed by 14 games, including both regular season and NCAA Tournament games, and local minor league professional basketball games involving the Long Beach Jam, with the first broadcast to occur on December 10, 2003

KVMD also provides Vietnamese-language programming, five days a week, for the substantial Vietnamese-American population in the TWC Communities. Further, the Station recently began broadcasting Spanish-language religious programming 12 hours a day, Monday through Friday. Eighty-five percent of this Spanish-language religious programming is locally produced by community churches throughout Southern California, where Hispanics are a significant portion of the local population

The Station clearly offers an excellent line-up of local programs of interest to viewers in the Los Angeles DMA. Carriage of the Station in the TWC Communities would bring these programs to an expanded audience, enabling the Station to generate greater advertising revenue. This revenue would in turn help KVMD cover the expenses of converting from analog to digital format as well as the costs associated with expanding the digital services offered by the Station. By helping to secure the financial success of the Station, and the commensurate ability of KVMD to fund the development of new digital services, TWC's carriage of the Station would clearly further the DTV Transition.

Further, the importance of cable carriage to the ultimate success of the DTV Transition is very well-documented. Without widespread cable carriage of local digital signals, viewers are unlikely to embrace digital technology in numbers sufficient to achieve the 85%-in-market threshold mandated by Congress:

[A]nalog broadcast signals are not to be turned off after December 2006 unless 85% of households in a given market can receive DTV. More than two thirds of American households subscribe to cable television, and thus cable carriage of DTV signals may play a large role in determining when that 85 percent threshold has been reached. The law says that households receiving DTV via cable count toward the 85 percent threshold only when their cable system carries a digital broadcast channel from all stations broadcasting digitally in their television market. Yet, while most large cable companies are planning to provide digital broadcast channels from some broadcast stations in many markets, none currently plan to carry digital broadcast channel from all digital broadcast stations. As a result, it appears highly unlikely that cable carriage of local digital broadcast

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signals will be sufficient to substantially contribute to reaching an 85 percent market penetration by 2006.

United States General Accounting Office, GAO-03-7, *Telecommunications. Additional Federal Efforts Could Help Advance Digital Television Transition* 22 (2002).

Recognizing that the success of digital-only stations such as KVMD is critically important to the success of the DTV Transition, Adelphia Communications and Charter Communications have agreed to carry the Station on their respective systems in the Los Angeles DMA. Charter carries the Station on its Inland Empire system, and Charter has agreed to carry the Station on Charter's Monterey Park and Malibu systems in April 2004, its Long Beach system by June 2004, and its Glendale and Whittier systems by August 2004. Adelphia currently carries the Station on substantially all of Adelphia systems in the Los Angeles DMA.

Unfortunately, TWC has not acted with the same degree of responsibility as Adelphia and Charter. Rather than demonstrate its commitment to the DTV Transition, TWC has frustrated the goals of the Station, as well as the goals of the Commission, by refusing to carry the Station in the TWC Communities. TWC has rejected all of KVMD's efforts to work out a carriage agreement, and instead has litigated against KVMD before the Commission order to remove the TWC Communities from the Station's market. This course of action hardly qualifies as "progress in working out mutually beneficial arrangements with digital broadcast stations," as touted by TWC in its Notice to the Commission.

While some cable operators, such as Adelphia and Charter, are evidencing their support for the DTV Transition, others, such as TWC, remain as intransigent as ever. The Commission must not accept TWC's self-congratulatory assessment of its role in the DTV Transition, but rather recognize that TWC is selective in this process and ignores stations such as KVMD that are truly promoting "localism" in broadcasting. The Commission should hold TWC accountable for its failure to support digital-only stations such as KVMD. By rejecting rather than embracing such stations, TWC is frustrating rather than advancing the DTV Transition.

Respectfully submitted,



Barry A. Friedman

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